

Franchise Tax Board Proposed Regulation 19041

Section 19041 is adopted to read:

§19041. Protest.

(a) General. A taxpayer has the right to file a protest with respect to the deficiency proposed to be assessed by a Notice of Proposed Assessment. The department shall review and act upon the protest based upon a determination of whether the deficiency is correct, in whole or in part. This regulation sets forth and makes specific the rules for filing, considering and determining a protest.

(b) Time for Filing a Protest.

(1) Beginning of Period. A protest is timely if filed with the department within 60 days after the mailing of the Notice of Proposed Assessment to which it relates. The date of mailing of a Notice of Proposed Assessment is presumed to be the date appearing on the Notice of Proposed Assessment. This presumption may be rebutted by the postmark on the envelope in which the Notice of Proposed Assessment was mailed.

(2) End of Period. A protest is timely filed if it is mailed to the department within 60 days after the date of the mailing of the Notice of Proposed Assessment. If the 60th day falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

(3) Establishing Date of Mailing. The date of the mailing of a protest may be established by either the postmark on the envelope in which it was mailed, or proof of mailing from the postal service. The department is not required to retain the envelope in which the protest was mailed.

(4) Postal Service. For purposes of filing a protest, any reference to mail or postal service shall include United States mail, the postal system of any foreign country, or any designated delivery service as designated by the Secretary of the Treasury of the United States under the authority of Section 7502(f) of the Internal Revenue Code.

(c) Manner of Filing. A protest is filed by mailing it to the address provided on the reverse side of the Notice of Proposed Assessment.

(d) Form.

(1) Writing. A protest must be in writing, must be dated, and must indicate that a protest is being made against the proposed deficiency assessment reflected in a Notice(s) of Proposed Assessment..

(2) Contents. The protest shall set forth:

- (A) the name of the taxpayer or taxpayers,
- (B) the taxpayer's or taxpayer's identifying number(s) (Social Security number of individuals or federal identification number for entities, such as corporations, estates and trusts, or partnerships),
- (C) the current address of the taxpayer(s) or the taxpayer's representative to which correspondence concerning the protest should be directed.
- (D) the amount(s) being protested,
- (E) the year(s) to which the protest is directed,
- (F) the identifying number(s) contained on the Notice(s) of Proposed Assessment, and
- (G) the date of the Notice(s) of Proposed Assessment, and
- (H) if the taxpayer(s) asserts that the Notice(s) of Proposed Assessment was (were) mailed on a date different than the date appearing on the Notice(s) of Proposed Assessment, a statement setting forth the basis of the assertion.

(3) Oral Hearing. A request for an oral hearing on the protest must be expressly stated and must be included as part of the original protest. The right to an oral hearing is waived if a request is not included in the original protest; however, the department may in its discretion grant an oral hearing if not requested in the original protest. See Regulation Section 19044.

(4) Signed. The protest must be dated and signed by the taxpayer(s) or by an authorized representative.

(5) Grounds and Reasons. The protest must specify the grounds upon which it is based, set forth the facts involved, and the reason(s) why the proposed assessment is in error. See subsection (e) of this regulation for rules relating to grounds.

(6) Legal Authorities. The protest should include any legal authorities relied upon by the taxpayer(s), including relevant statutes, regulations, rulings, and administrative or judicial decisions.

(e) Grounds.

(1) No Limitation on Grounds for Filing a Protest. A protest may raise objections to the deficiency proposed to be assessed based upon any grounds. A protest does need to be limited to objections to the adjustments made by the Notice(s) of Proposed Assessment.

(2) Limitation to Grounds in Original Protest. Except as otherwise provided in this regulation, a protest shall be limited to the grounds set forth in the original protest. The department shall have the discretion to inquire into or allow the introduction of new, additional or alternative grounds to determine whether the deficiency is correct in whole or in part. The department's discretion in this respect shall be liberally construed with the

view to allowing the taxpayer to present new grounds consistent with timely and efficient tax administration.

(3) New, Additional or Alternative Grounds. A new, additional or alternative ground includes a different ground or one that alters an objection to the Notice of Proposed Assessment contained in the original protest. Assertions which clarify or develop the original protest and are not inconsistent with the original protest are not a new, additional or alternative ground.

(4) Requests to Amend. A request to amend an original protest to set forth new, additional or alternative grounds shall be accepted if:

(A) It is part of the response to a request by the department to perfect a protest pursuant to subsection (f)(3) of this regulation, or to provide additional information or authorities pursuant to subsection (g) of this regulation; or

(B) It is submitted at least 60 days prior to the date of the scheduled oral hearing on the protest, if an oral hearing has been requested. Granting a request for an amendment submitted less than 60 days prior to the oral hearing is discretionary with the department. A taxpayer an amendment less than 60 days prior to an oral hearing must provide the appropriate facts and authorities in support of the new ground with the request.

(C) A taxpayer who has not requested an oral hearing and who has not been requested by the department to perfect a protest pursuant to subsection (f)(3) of this regulation, or to supply additional information or authorities pursuant to subsection (g) of this regulation, is limited to the grounds set forth in the original protest. The department, in its discretion, may allow a taxpayer to amend a protest to set forth new, additional or alternative grounds only if the amendment is received by the department prior to the date a Notice of Action on the protest was issued. A taxpayer submitting a new, additional or alternative ground must provide the appropriate facts and authorities in support of the ground with the request.

(5) Amendment as a Claim for Refund. Amending a protest to add new, additional or alternative grounds, or to change the grounds upon which a protest is made, shall not constitute the filing of a claim for refund. See Sections 19306 through 19313, Revenue and Taxation Code, and the regulations adopted pursuant thereto.

(f) Perfecting a Protest.

(1) Perfecting a Protest. A protest which does not contain all of the information required by subsections (2), (4), and (5) of subsection (d) of this regulation must be perfected or it is not a valid protest.

(2) Procedures. Except as provided in subsection (e) of this regulation:

(A) A taxpayer who has not requested an oral hearing on the original protest may perfect a timely filed protest by submitting the missing information. Submission must be within 60 days of the filing date of the original protest as determined by the earlier of the date shown on the protest or the date received by the department.

(B) Except as limited by subsection (3) of this subsection, a taxpayer who has requested an oral hearing may perfect a timely filed original protest by submitting the information missing from the original protest prior to the conclusion of the oral hearing or such extended time as may be granted by the department.

(3) Franchise Tax Board Request to Perfect.

(A) Determination of Need. Upon review of the original protest, the department may determine that it is incomplete and needs to be perfected. The department shall notify the taxpayer, or the taxpayer's representative, of its determination and specify how the protest needs to be perfected.

(B) Notification. A need to perfect a protest does not arise unless and until the taxpayer, or the taxpayer's representative, is notified by mail by the department that the original protest is incomplete and needs to be perfected.

(C) Time to Perfect. Thirty days after the notice, described in (B) of this subsection, is mailed will be presumed to be sufficient time to perfect a protest. An extension of 15 days will be granted if requested prior to the expiration of the 30 days. An additional extension of time to perfect may be granted, if requested prior to the expiration of the original 30 days or a fifteen-day extension, in limited circumstances. The granting of an additional extension is on the discretion of the department. A taxpayer has the burden of establishing why any additional time to perfect is necessary.

(D) A taxpayer, or the taxpayer's representative, who has been notified to perfect a protest may provide information and legal authorities in addition to the specific information requested by the department to perfect the protest. Such additional information and authorities will be considered by the department in determining the protest.

(4) Action on Nonperfected Protest. A protest which has not been timely perfected shall be acted upon through the issuance of a Notice of Action on the protest as provided for in subsection (h)(2) of this regulation.

(g) Request of Department for Additional Information or Authorities.

(1) Right to Request. The department may request additional information or authorities regarding the grounds raised in the protest filed to make its determination with respect to the protest. A request for additional information or authorities may be made either in writing or during the course of an oral hearing. See Regulation Section 19044(h)(9).

(2) Duty to Respond. A taxpayer, or the taxpayer's representative, has the responsibility to make a timely and complete response to any requests for additional information or authorities by the department pursuant to subsection (1) above.

(A) Time for Response. A request for additional information or authorities by the department shall include a due date for a timely response. The period for response shall not be less than 30 days from the date of the request unless otherwise agreed to by the taxpayer, or the taxpayer's representative, and the department.

(B) Extensions. One extension of time to submit the requested information or authorities will be granted if requested. The period of extension shall not be less than one half the period of time allowed for response in subsection (A) above.

(C) Additional Time. In its discretion, the department may grant extensions of time to respond in addition to the periods provided for in subsection (B) above.

(3) Consequence of Failure to Respond. Failure to provide a timely and complete response to a request from the department for additional information or authorities can result in the protest being determined by resolving questions of fact to which the requests relate against the taxpayer. In addition, failure to provide a timely and complete response may give rise to an assertion by the department that the taxpayer has failed to exhaust administrative remedies in subsequent administrative or judicial proceedings.

(h) Determination on Protest.

(1) Letter of Determination and Notice. The department shall provide to the taxpayer, or the taxpayer's representative, a written Notice of Action setting forth the determination that has been made with respect to the protest. If an oral hearing had been requested on the protest, the department will also provide the taxpayer, or the taxpayer's representative, with a letter setting forth its determination, unless the receipt of a separate letter is waived in writing or orally. If a letter has been sent to the taxpayer, or the taxpayer's representative, setting forth the basis of the determination, the Notice of Action issued with respect to the protest may set forth the determination by reference to the letter. A taxpayer may appeal the department's determination on its protest, as reflected on the Notice of Action, to the California State Board of Equalization within the time limits provided by the Revenue and Taxation Code. See Sections 19045 and 19324, Revenue and Taxation Code, and the regulations adopted pursuant thereto.

(2) Notice for Purposes of Appeal. The date from which an appeal to the California State Board of Equalization can be taken begins on the date of the mailing of the Notice of Action issued with respect to the protest. The Notice of Action is a document separate and distinct from a letter of determination. The date of mailing of the Notice of Action is presumed to be the date shown on the Notice of Action. This presumption may be overcome by the postmark appearing on the envelope in which the Notice of Action was mailed.

Note: Authority Cited: Section 19503, Revenue and Taxation Code. Reference: Section 19041, Revenue and Taxation Code.